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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,071	08/04/2003	Rebecca Lyn Dilnik	18,128	5244

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EXAMINER
MIGGINS, MICHAEL C

ART UNIT	PAPER NUMBER
1794	

MAIL DATE	DELIVERY MODE
04/30/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/634,071	DILNIK ET AL.	
	Examiner	Art Unit	
	Michael C. Miggins	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 February 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,5-7,9,10,13,15,16,18-26,50,51,53-55,57,58,61 and 63-86* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *86* is/are allowed.

6)☒ Claim(s) *1,5-7,9,10,13,15,16,18-26,50,51,53-55,57,58,61 and 63-86* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

REJECTIONS WITHDRAWN

1. All of the rejections set forth in the non-final rejection of 9/10/07 have been withdrawn.

REJECTIONS REPEATED

2. There are no rejections repeated.

NEW REJECTIONS

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1, 3, 5-7, 9-10, 13, 15-16, 18-19, 21, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Masterson (US 2002/0014273) in view of Wallo (US 6607739).

Masterson discloses a poufable product capable of being converted into a pouf product comprising at least one flat ply of flexible sheet material having at least one side edge, at least one cord, wherein the cord engages and is interlaced with at least one of the flat ply of the flexible sheet material such that the flexible sheet material is capable

of bunching on or about the cord (paragraphs [0001], [0017], [0036] – [0040] and Figs. 7-10).

Masterson also discloses a first area and a second area wherein the first area provides at least one different characteristic or property than the second area (since different layers and colors are used [0017] and since the article is sequentially squished thus the squished sections have less surface area than the non-squished areas, see Fig. 8), wherein the flat ply of flexible sheet material has a tubular structure (Figs. 7-8), wherein at least 1 the flat ply of the flexible sheet material comprises at least two layers, or plies, wherein one has a different characteristic or property than the other layers of flexible sheet materials (paragraph [0017]).

Masterson also discloses wherein the cord engages is interlaced with the flat ply of flexible sheet material adjacent at least a portion of the side edge of the flat ply of flexible sheet material (paragraphs [0036] – [0040] and Figs. 6-10), further comprising a cord fastener (paragraph [0040], 52 is the fastener), further comprising a handle (paragraph [0040] wherein 64 is the handle), wherein the flat ply is breathable (since polymeric scrim is used which is stitched, paragraphs [0001], [0036] – [0040]).

Masterson fails to disclose wherein the sheet material includes a lathering area and an exfoliation area.

Wallo discloses a sheet material including a lathering area and an exfoliation area (column 2, lines 55-67, column 3, lines 22-37, column 4, lines 16-28, column 8, lines 39-58) in a pouf product for the purpose of providing improved lathering (column 8, lines 39-58).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the sheet material includes a lathering area and an exfoliation area in Masterson in order to provide improved lathering as taught or suggested by Wallo.

Masterson does not specifically disclose applicant's recited ranges for filament size, length of ply, and cord width. However, Masterson does disclose that the maker would choose the length of material to be used, determine the desired width and decide on the gauge of stitching to be used down the center of the material and the formula selected determines the size, shape, density and look of the finished puff (paragraph [0010]). Thus one of ordinary skill in the art would have recognized that the amount of water would be readily determined through routine experimentation depending on the desired end results absent some showing of unexpected results. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided applicant's recited ranges in order to provide a pouf that is more visually appealing to the consumer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges or an optimum value of a result effective variable involves only routine skill in the art (MPEP 2144).

5. Claims 50-51, 54-55, 57-58, 61, 65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al. (US 3683921) in view of Wallo (US 6607739).

Brooks discloses a poufable product capable of being converted into a pouf product (since the sheet is capable of bunching on itself, see column 7, lines 8-21) comprising at least one flat ply of flexible sheet material having at least one side edge wherein at least a portion of the flat ply of flexible sheet material comprises a shrinkable material such that the flexible sheet material is capable of bunching on itself (column 1, lines 1-11, column 5, lines 25-34, column 6, lines 34-64, column 7, lines 8-21).

Brooks also discloses a first area and a second area wherein the first area provides at least one different characteristic or property than the second area (column 7, lines 8-21), wherein at least 1 flat ply of flexible material comprises at least 2 layers, or plies (Fig. 1), wherein at least one layer of the flat ply of the flexible material provides at least one different characteristic or property than the other layers (column 7, lines 8-21), wherein the filament size is between about 0.1 denier and about 10 denier (column 10, lines 31-63), further comprising a handle (52 from Fig. 6), wherein the ply is breathable (since fibrous and net materials are used (columns 3-4).

Brooks fails to disclose wherein the sheet material includes a lathering area and an exfoliation area.

Wallo discloses a sheet material including a lathering area and an exfoliation area (column 2, lines 55-67, column 3, lines 22-37, column 4, lines 16-28, column 8, lines 39-58) in a pouf product for the purpose of providing improved lathering (column 8, lines 39-58).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the sheet material includes a

lathering area and an exfoliation area in Brooks in order to provide improved lathering as taught or suggested by Wallo.

6. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masterson (US 2002/0014273) in view of Wallo (US 6607739), as applied to claims 1, 3, 5-7, 9-10, 13, 15-16, 18-19, 21, 23 above, and further in view of Farmer (US 2003/0014824).

Masterson fails to disclose wherein the flat ply of flexible sheet material forms a mitt structure.

Farmer discloses a flat ply of flexible sheet material forms a mitt structure (paragraphs [0029] – [0031] and Figs. 4-6) for the purpose of providing a bathing tool which enables efficient cleansing and exfoliating (paragraph [0007]).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a flat ply of flexible sheet material forms a mitt structure in the product of Masterson in order to provide a bathing tool which enables efficient cleansing and exfoliating as taught or suggested by Farmer.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masterson (US 2002/0014273) in view of Wallo (US 6607739), as applied to claims 1, 3, 5-7, 9-10, 13, 15-16, 18-19, 21, 23 above, and further in view of Firgo et al. (US 6007750).

Masterson fails to disclose wherein at least a portion of the ply is biodegradable.

Firgo discloses a biodegradable ply (column 3, lines 9-28) in a bathing sponge (column 3, lines 27-28) for the purpose of providing an ecco-friendly bathing product.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a biodegradable ply in the product of Masterson in order to provide an ecco-friendly bathing product as taught or suggested by Firgo.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masterson (US 2002/0014273) and Wallo (US 6607739) in view of Farmer (US 2003/0014824), as applied to claim 20 above, and further in view of Osiecki et al. (US 6485822).

Farmer discloses a mitt as discussed above.

Masterson and Farmer fail to disclose wherein the flat ply is impermeable.

Osiecki discloses a flat ply which is impermeable (column 5, lines 13-34) in a cleaning sponge for the purpose of preventing water from flowing between layers (column 5, lines 13-34).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the flat ply is impermeable in the product of Masterson in order to prevent water from flowing between layers.

9. Claims 25-26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Masterson (US 2002/0014273) in view of Wallo (US 6607739), as applied to claims 1, 3,

5-7, 9-10, 13, 15-16, 18-19, 21, 23 above, and further in view of Brooks et al. (US 3683921).

Masterson fails to disclose wherein the ply or cord comprises a shrinkable material.

Brooks discloses the use of shrinkable materials in sponges (column 1, lines 1-11, column 6, lines 34-64, column 7, lines 8-21) in order to control puckering and rippling.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the ply or cord comprises a shrinkable material in the product of Masterson in order to provide controlled puckering and rippling as taught or suggested by Brooks.

10. Claims 53 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al. (US 3683921) in view of Wallo (US 6607739), as applied to claims 50-51, 54-55, 57-58, 61, 65 and 67 above, and further in view of Masterson (US 2002/0014273).

Brooks fails to disclose wherein the flat ply of flexible sheet material has a tubular structure.

Masterson discloses wherein the flat ply of flexible sheet material has a tubular structure (Fig. 5) in a sponge for the purpose of providing consistency of the finished products size, shape and look.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the flat ply of flexible sheet material has a tubular structure in the product of Brooks in order to provide consistency of the finished products size, shape and look as taught or suggested by Masterson.

Masterson does not specifically disclose applicant's recited ranges length of ply. However, Masterson does disclose that the maker would choose the length of material to be used, determine the desired width and decide on the gauge of stitching to be used down the center of the material and the formula selected determines the size, shape, density and look of the finished puff (paragraph [0010]). Thus one of ordinary skill in the art would have recognized that the amount of water would be readily determined through routine experimentation depending on the desired end results absent some showing of unexpected results. Further, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided applicant's recited ranges in order to provide a pouf that is more visually appealing to the consumer, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges or an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

11. Claim 64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al. (US 3683921) in view of Wallo (US 6607739), as applied to claims 50-51, 54-55, 57-58, 61, 65 and 67 above, and further in view of Farmer (US 2003/0014824).

Brooks fails to disclose wherein the flat ply of flexible sheet material forms a mitt structure.

Farmer discloses a flat ply of flexible sheet material forms a mitt structure (paragraphs [0029] – [0031] and Figs. 4-6) for the purpose of providing a bathing tool which enables efficient cleansing and exfoliating (paragraph [0007]).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a flat ply of flexible sheet material forms a mitt structure in the product of Brooks in order to provide a bathing tool which enables efficient cleansing and exfoliating as taught or suggested by Farmer.

12. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al. (US 3683921) in view of Wallo (US 6607739), as applied to claims 50-51, 54-55, 57-58, 61, 65 and 67 above, and further in view of Firgo et al. (US 6007750).

Brooks fails to disclose wherein at least a portion of the ply is biodegradable.

Firgo discloses a biodegradable ply (column 3, lines 9-28) in a bathing sponge (column 3, lines 27-28) for the purpose of providing an ecco-friendly bathing product.

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided a biodegradable ply in the product of Brooks in order to provide an ecco-friendly bathing product as taught or suggested by Firgo.

13. Claim 68 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brooks et al. (US 3683921) and Wallo (US 6607739) in view of Farmer (US 2003/0014824), as applied to claim 64 above, and further in view of Osiecki et al. (US 6485822).

Farmer discloses a mitt as discussed above.

Brooks and Farmer fail to disclose wherein the flat ply is impermeable.

Osiecki discloses a flat ply which is impermeable (column 5, lines 13-34) in a cleaning sponge for the purpose of preventing water from flowing between layers (column 5, lines 13-34).

Therefore it would have been obvious to one of ordinary skill in the art at the time applicant's invention was made to have provided wherein the flat ply is impermeable in the product of Brooks in order to prevent water from flowing between layers.

ANSWERS TO APPLICANT'S ARGUMENTS

14. Applicant's arguments of 2/11/08 have been carefully considered but are moot in view of the new grounds for rejection set forth above.

Allowable Subject Matter

15. Claim 86 is allowed. The prior art fails to disclose a cord attached to packaging such that the packaging activates bunching around the cord.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael C. Miggins whose telephone number is 571-272-1494. The examiner can normally be reached on 1:00-10:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael C. Miggins/
Primary Examiner, Art Unit 1794

MCM
April 28, 2008